



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

AEG

Docket No. 8883-97

16 December 1999

Ms. [REDACTED]

Dear Ms. [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary evidence considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion dated 13 August 1999 from the Department of Psychiatry, Naval Medical Center, Portsmouth, VA; and the memorandum for record dated 2 December 1999. Copies of the opinion and memorandum are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you first enlisted in the Navy on 1 June 1988 at age 18 for a term of four years. During this enlistment, you received one marginal performance evaluation of 3.2 (4.0 scale), but also received three other evaluations of 3.6 and one of 3.8. The comments in one evaluation noted that "on occasion, her frankness has created friction among the military staff," and "(you) . . . (are) highly suited for any job which requires attention to detail and limited interface with others." During this enlistment, you served for about eighteen months at each of two duty stations and were advanced to mess management specialist third class (MS3; E-4). You reenlisted for four years on 3 January 1992 and were subsequently reassigned to Naval Support Facility, Diego Garcia, where you served for about a year. In March 1993 you reported to Naval Air Station (NAS) Whidbey Island for duty with Patrol Squadron (VP) 46. On 16 December 1993, you were advanced in rate to MS2 (E-5). During this second

enlistment, you received seven consecutive evaluations of 3.8. These evaluations made comments such as "positive attitude," "a capable, cheerful team player," and "works well with seniors and peers alike." The last of these evaluations, which closed out on 31 March 1995 characterized you as a "hard-charging, totally committed, steady, solid performer." However, this evaluation also noted that you "must continue to focus on communicating (your) ideas and leadership skills in a positive manner--expressing (your) ideas through the chain of command and developing the patience to allow positive changes to take hold." On 24 August 1995 you received orders reassigning you to Naval Hospital, Okinawa, effective 10 June 1996. On 9 September 1995, you extended your enlistment for 26 months.

The record reflects that you became disenchanted with the MS rating and submitted a request to change to the master-at-arms (MA) rating in October 1995. The psychiatric evaluation required in connection with this request was not performed until 12 February 1996, at Naval Hospital, Oak Harbor (NHOH), WA. Upon evaluating you, the examining psychiatrist, Commander (CDR) H, noted that the flight surgeon, Lieutenant (LT) R, had made a preliminarily diagnosis of personality disorder. In his evaluation, CDR H went into considerable detail concerning your past history, including childhood and adolescence, and mental status. He noted that "there does not seem to be any history of abuse or dysfunction as a child." However, he also stated that during adolescence, you "took up a position in many cases against figures of authority and those that she perceived as being unfair to her. . . ." Based on the information presented to him at the time, CDR H stated that a diagnosis of personality disorder was not warranted. Accordingly, he deferred his diagnosis pending further information and the results of psychological testing.

On 25 April 1996, after receiving "collateral information" and the results of psychological testing, CDR H diagnosed you with a moderate to severe personality disorder, not otherwise specified, with anti-social, borderline and narcissistic features. He stated that you had failed to succeed in a three-month trial period in the MA rating, and had been involved in "multiple instances of substandard behavior." Administrative separation was recommended. At this time, CDR H's diagnosis was reflected only in a handwritten entry in your medical record. On 2 May 1996 the executive officer (XO) of VP 46 executed a memorandum for record in which he pointed out that based on the evaluation of CDR H, you were now ineligible for overseas assignment and the transfer orders of August 1995 had been cancelled. However, the XO also stated that the command would assist you in obtaining treatment if you so desired, and no stigma would attach to such treatment. The XO also noted that you wanted a second opinion concerning your mental condition from a health-care provider at a different facility.

On 14 May 1996 CDR H undertook a formal evaluation expanding on the brief medical record entry of 25 April 1996. In this evaluation, he offered the following comments:

The patient was evaluated initially at this facility on 12 Feb 96. At that time, without the benefit of collateral information, the patient made a convincing story that she was suffering from the persecution and misunderstanding of several individuals in her command during a deployment to Diego Garcia and at the present time. However, with input of extensive collateral information and repeated clinical evaluation of this individual, the story unfolded of a service member, who although (she) had completed seven years of continuous active duty, had never been at one duty station or observed in an operational environment long enough to be thoroughly evaluated, until this current deployment.

. . . During that time she was continuously in conflict with her supervisors, her flight surgeon, and other operational individuals, to the point that she was sent for psychiatric evaluation and possible evaluation for suicidal ideation. A tentative diagnosis of borderline personality disorder was made by her flight surgeon, then she was sent here for further evaluation. In the context of that, it appears that the service member may have destroyed her own service jacket. Once returning to NAS Whidbey, her difficulties continued. She engaged in a personal attack on her flight surgeon, and projected her difficulties on to others, such as her command master chief. It turns out that the patient had made several requests to transfer to other rates, but was turned down. Further, the patient was identified by her current (CO) as most probably having a personality disorder, and could not get along with elements within the squadron. In spite of this fact, both myself and the (CO) decided the patient should be given a trial of instruction and training with the NAS security department. The security officer agreed to this, and I agreed to withhold a final determination about her psychiatric condition, pending a 90-day evaluation on-the-job training with security. During this time, the patient was required to make monthly visits to (the) Mental Health Clinic for follow-up. She was also identified to have some agitation, and possibly depression complicating her personality disorder; however, the patient refused to engage in treatment or accept either medical treatment or psychotherapy. She repeatedly failed to make appointments, and when seen in the clinic, was angry, oppositional, disinhibited, had extreme difficulty with boundaries, and showed no military bearing. The patient was (sent) TAD (temporary additional duty) to Security from 20 Feb to 15 Apr 96, at which time she was released with an adverse report, stating that she had difficulty performing her duties, could not distinguish between civilian and military

law enforcement procedures, did not understand the issue of deadly force, showed little or no concern for instruction given to her by other qualified personnel, was found not to be present when assigned to a place of duty, and that she continued to create turmoil, and argued with watch commanders, field training officer, etc. She was counselled numerous times about her performance, but nothing changed. It was felt that she would be a danger to herself and others in the law enforcement field. She was so rigid that she was unable to accept any constructive criticism.

CDR H then noted that the psychological tests previously administered to you had been interpreted by a psychologist and were still being evaluated by a clinical psychologist. On the basis of the former evaluation, CDR H opined that you may have "attempted to change the information to make herself look well, somewhat consistent with anti-social personality traits." CDR H also stated that you had great difficulty distinguishing between the roles of the command, the therapist and yourself, "consistent with borderline personality disorder."

CDR H then reiterated his diagnosis of a moderate to severe unspecified personality disorder with anti-social, borderline and narcissistic features. He also stated that you might be suffering from related depression. Although this evaluation did not contain any insights into your childhood beyond that set forth in the evaluation of 12 February 1996, CDR H now noted a "history of dysfunctional childhood." However, CDR H also said you were not suicidal or homicidal and at low risk for such behavior in a structured environment, although you would be at risk if left in the security field. CDR H also made the following assessment and recommendation:

The patient demonstrates a pervasive history of extremely rigid personality style consistent with personality disorder, to the degree that she currently, both by history and behavior performance, is not compatible with continued naval service, even though she would be considered fit for duty by Navy regulations. The most disturbing element is the inability of the individual to engage in any form of mental health treatment that would possibly improve her social and occupational functioning.

Although she is fit for general duty, she is not suitable for retention in the naval service due to personality disorder, moderate-to-severe. She has well documented deficits in performance and behavior after repeated efforts to counsel or change this have failed. The patient has been given the benefit of the doubt in repeated situations over the last year to correct her behavior; none of this has happened. This information has been communicated to her previous (CO), her current (CO), and her flight surgeon

as early as 25 Apr 96. It is recommended that the person be administratively discharged from the Navy.

Your request for a second opinion apparently was granted since, on 29 May and 5 and 12 June 1996, you were evaluated by LT G, Medical Service Corps (MSC), a member of the Psychology Staff at Naval Hospital Bremerton, WA. During the evaluation, LT G interviewed you, and reviewed medical and service records and the psychological testing conducted in conjunction with the earlier evaluation. LT G's history of your case appears to be based primarily, although not exclusively, on what you told her. Along these lines, you said that the problems actually began in 1994, when it was alleged that you disobeyed a lawful order. Although the allegation was subsequently dismissed, you said that the incident caused friction between you and the command master chief (CMC) and other supervisors. You also said that difficulties during the deployment to Diego Garcia were due, in part, to an erroneous belief on the part of some individuals that you had written a suicide note which, as LT G noted, "has never been produced or documented." You also accused the flight surgeon of taking your medical record because this individual had made false entries. You admitted that you had performance problems during the period of duty with the security department at NAS Whidbey Island, but said you made mistakes because you were learning a new job and not because you disregarded orders." LT G summarized your history by noting that "she explains most of the . . . interpersonal conflicts by suggesting she is misunderstood and persecuted." Concerning the test results, LT G agreed with CDR H that they were of "questionable validity" since you tried to portray yourself favorably. However, LT G said that the results nevertheless suggested that you disregarded social standards and had trouble with authority figures, could be unwilling to accept responsibility for your actions, and rationalized difficulties and projected blame.

Despite these comments, LT G only diagnosed you with an occupational problem and anti-social, narcissistic and borderline traits. She explained her belief that a diagnosis of personality disorder was not warranted by stating:

The patient's characterological style is indicative of an individual who has difficulty with authority and interpersonal relationships as evidenced by her recent conflicts in the military and test results. However, the patient's aforementioned problems have only recently developed in the past two years and according to the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition), a personality disorder diagnosis requires "a pattern of long duration and its onset can be traced back at least to adolescence or early adulthood." The patient has no known enduring, chronic history of problems in the military prior to 1994 or prior to her enlistment. In addition, her service record reflects a service member who generally performs well. There were only two

documented areas that she needed to improve--military bearing and a need to "communicate in a more professional manner." If, in fact, her characterological style continues to be problematic in a broad range of areas for a significant amount of time, then a diagnosis of personality disorder may be warranted. However, it is this evaluator's opinion that the patient's history does not reflect a personality disorder at this time.

The evaluation report of LT G states that it was "reviewed, discussed and approved" by her superior, Captain (CAPT) B, MSC, the supervising psychologist. In a 17 July 1996 memorandum to the CO of VP 46, the CO of NHOH noted the discrepancies in the evaluations of CDR H and LT G, but concurred with the findings and conclusions of CDR H, and supported his recommendation for administrative discharge.

On 23 July 1996 you were counseled concerning deficiencies in performance and conduct, specifically, "personality disorder manifested by anti-social behavior, a reluctance to take responsibility for your own behavior, and an inability to interact with authority figures." You were advised to obtain counseling and treatment from the servicing naval hospital. An Administrative Remarks (page 13) entry was prepared to reflect this counseling, but you refused to sign it.

On 23 August 1996 you received nonjudicial punishment (NJP) for disobedience in that on 13 May 1996, after your transfer orders had been cancelled, you scheduled three household goods shipments to Japan despite having been told not to do so. Punishment consisted of a suspended reduction to MS3 and a forfeiture of \$400. You appealed the NJP, essentially contending that no such order was given, but the appeal was denied. In September of 1996 you were charged with using provoking words, communicating a threat, soliciting two other individuals to communicate threats, and soliciting another servicemember to commit assault and battery, in violation of Articles 117 and 134 of the Uniform Code of Military Justice. All of these offenses allegedly occurred in August and September 1996. After an investigating officer concluded that the allegations were substantiated, the CO of VP-46 referred the charges to a special court-martial (SPCM). However, on 24 November 1996 the CO withdrew those charges and dismissed them.

On 3 January 1997 the CO of the Transient Personnel Unit (TPU) at Puget Sound initiated administrative separation action against you by reason of convenience of the government on the basis of the diagnosed personality disorder, and by reason of misconduct due to commission of a serious offense as evidenced by the 23 August 1996 NJP and the September 1996 charges. On that same day you elected to present your case to an administrative discharge board (ADB), which met on 28 January 1997. At the outset of the government's case, the recorder to the ADB presented a number of statements to the effect that during 1995 and 1996, you had

trouble getting along with various individuals, both superiors and coworkers, in your squadron and supporting units.

The government's first witness was CDR H. After testifying as to his qualifications and diagnostic procedures, he related his findings pertaining to you, which were consistent with his evaluations of 12 February and 14 May 1996. Along these lines, he said that you were "constantly in conflict with supervisors . . ." and "she has had this problem since junior high school." CDR H then explained as follows why he disagreed with the contrary diagnosis of LT G:

LT (G) is psychology graduate from a training program. She does not have a license. She is not a clinical psychologist, she is still in training. She has a limited amount of time working with live, Navy patients. I am not trying to discredit her credentials. Her supervisor is a reserve psychologist who never saw this patient to our knowledge. LT (G) did not collect collateral information. If you look at her report there is more in common with my report. She did not have information at the time that went back further than two years ago, that is why she disqualified my diagnosis. Remember, those traits are fixed at adolescence. If you don't look that far back (it) does not mean a person does not have a personality disorder. The information that we received from the patient about (the) dysfunctional part of her adolescence (shows) that she had problems with authority figures. If you look at the results of the psychological testing, she also points out the features of personality disorder. She states in her report that she had anti-social and borderline traits. That is what I said in my report. She further states that if her characterological style continues that (you) would be considered a personality disorder. A characterological style is a personality disorder.

An Aviation Maintenance Administrationman Chief (AZC) C, who supervised you for a three-month period in mid-1995, then testified for the government and stated that you were "administratively adept and very versatile with getting the job done." However, according to AZC C, you also "had trouble dealing with customers," and were "demanding and hard to get along with." He further stated that no one at the command was "out to get" you, and said that "I have been in the Navy for 19 years and in those years, I have never seen one command put forth the effort over one individual as I saw VP-46 do for (you)." He also said that you were "very good at manipulating, . . . very good at intimidating up and down the chain of command." However, in contrast to this testimony, defense counsel presented testimony from a Quartermaster Chief M, who supervised you prior to your assignment to VP-46. He said that you "showed a lot of hustle" in desiring to change your rate, and further said that he had no problems with you.

You then testified under oath and gave a lengthy recitation of your version of events while assigned to VP-46. You denied committing the offense for which she received NJP and the offenses alleged against her in September 1996. You also stated, in essence, that all of your problems began when you were working with security and filed a sexual harassment complaint against one of the chief petty officers. You also said that shortly after filing the complaint, CDR H notified you that he had diagnosed a personality disorder. You admitted to missing some follow-up sessions with CDR H after your attorney advised her not to talk with him.

LT G then testified for the defense, and explained as follows her disagreement with CDR H:

I disagree with CDR (H's) findings . . . My opinion was that she was not a personality disorder, although she had several personality traits. I took into consideration her past history, (and) . . . the problems at the command. I knew about the problems because I had different reports about the problems. I had CDR (H's) report too. I believe she is fit for full duty. She has had problems with authority. This does not mean that somebody has a personality disorder . . . I looked back in the history more than just two years prior. I was primarily looking at developmental history. I noted that in her enlisted evaluations that for the most part she was a 3.8 sailor. No significant problems noted. My opinion is still that she does not have a personality disorder.

After one more witness testified to your good performance of duty, both the recorder and defense counsel made closing arguments and the ADB closed for deliberation. Upon reopening, the senior member of the ADB announced unanimous findings that you had not committed misconduct by reason of commission of a serious offense, but that you had a personality disorder. The ADB also unanimously recommended a general discharge.

Shortly after the ADB, you submitted a lengthy letter of deficiency, taking issue with much of the testimony of CDR H. You also stated that you had an appointment on 10 March 1997 at Madigan Army Medical Center (AMC) for yet another evaluation and requested that the discharge authority defer a decision on the ADB's findings and recommendations until after that evaluation was received. On 21 February 1997 defense counsel submitted a letter of deficiency in which he stated that "LT (G) is the psychologist who has evaluated (you) most recently and is the psychologist who can deliver the more fair and unbiased evaluation because she is not attached to NAS Whidbey Island." Counsel also attempted to clarify as follows the issue pertaining to your sexual harassment complaint:

(She) was initially referred to the first mental health evaluation for an (MA) screening. However, in the midst of this evaluation (she) was having problems with her command and the security department at NAS Whidbey where she was assigned TAD. While assigned TAD, (she) believed she was sexually harassed. (She) contacted the local EEO (equal employment opportunity office) about the matter. Two days after her complaint was voiced to the EEO office, CDR (H) indicated that he now had "new information" and determined that she had a personality disorder and that she was not fit for duty.

Counsel also alleged that several of CDR H's comments at the ADB were incorrect, and requested that a final decision be deferred pending an additional evaluation. Nevertheless, you were separated on 28 February 1997 by reason of personality disorder with an honorable discharge, instead of the general discharge recommended by the ADB.

On 10 March 1997, at Madigan AMC, you were evaluated by a psychologist who declined to diagnose you with a personality disorder. It is unclear from the record whether the psychologist considered any of the documentation in the case, or rendered her diagnosis solely on the basis of your disclosures.

By letter of 17 March 1997 the CO of the TPU forwarded the ADB proceedings to the Bureau of Naval Personnel and stated that "I have reviewed both letters of deficiency and I still concur with the recommendation of the (ADB) . . . " The record does not reveal whether the CO ever saw the 10 March 1997 psychological evaluation.

The Board first considered the contention that the command failed to follow applicable provisions of the *Naval Military Personnel Manual* (MILPERSMAN) in that you did not meet the criteria for separation due to personality disorder, and the CO of VP 46 should not have taken final action in your case. At the time of your discharge, processing for separation by reason of convenience of the government due to a personality disorder was authorized as follows by Article 3620225 of Change 14 to the MILPERSMAN, dated 3 October 1996:

1. Basis

a. A member may be separated on the basis of a personality disorder that is so severe that the member's ability to function effectively in the naval environment is significantly impaired.

b. To be eligible for separation processing, the member must:

- (1) be medically diagnosed with a personality disorder (as described in the [DSM]) by competent military

medical authority which concludes that the member's ability to function effectively in the naval environment is significantly impaired . . .

(2) have violated a . . . (page 13) counseling/warning which specifically addresses the member's personality disorder . . .

Article 3610220 of Change 14 to the MILPERSMAN stated that the special court-martial convening authority (SPCMCA) is the separation authority for individuals processed for separation due to a personality disorder.

After carefully considering these provisions of the MILPERSMAN, it is clear to the Board that the requirements for separation were met. In the medical record entry of 25 April 1996 and the succeeding report of 14 May 1996, CDR H diagnosed you with a personality disorder. In the evaluation report, he recommended administrative separation because he found you "not suitable for retention in the naval service". He supported this conclusion by documenting a number of character traits which impinged on your ability to serve such as inability to get along with supervisors, depression, anger, lack of inhibition, and poor duty performance. Accordingly, although CDR H did not use the words "her ability to function in the military service is significantly impaired," the Board concluded that his extensive comments in the 14 May 1996 report should be so construed.

In reaching this conclusion, the Board noted the statements in CDR H's report that you were "fit for duty." However, the Board believed that these statements refer only to your medical fitness. A personality disorder does not render an individual medically unfit for duty and thus subject to discharge or retirement by reason of physical disability. Such a disorder only qualifies an individual for administrative separation and then, as shown by MILPERSMAN Article 3620225, only if the member's ability to perform military duties is impaired. Accordingly, it appears to the Board that CDR H believed that you were medically, but not administratively, fit for service.

The Board also noted that after the diagnosis of personality disorder was made, on 23 July 1996 you were counseled and warned by the issuance of a page 13 entry. The command did not initiate separation action until 3 January 1997, at which time the command could reasonably conclude that you violated the page 13 entry, as shown by the 23 August NJP and had reason to believe that you committed the August and September misconduct which led to the subsequent court-martial charges.

In accordance with MILPERSMAN Article 3610220 of Change 14, the CO of the TPU, the SPCMCA, was the separation authority in your case. Accordingly, there was no requirement to forward the case to a higher authority for action.

Turning to your contention that you do not have a personality disorder, the Board first considered your contention to the effect that the advisory opinion on this issue was furnished by a field activity and not by the Bureau of Medicine and Surgery (BUMED). Please understand that it is the standard practice to send requests for advisory opinion in cases such as yours to BUMED's Specialty Advisor for Psychiatry. That individual, a captain (CAPT) in the Navy Medical Corps, sends the cases to various psychiatrists in the field to prepare the advisory opinions. The Board concluded that this procedure is proper.

The substance of your contention is that CDR H's diagnosis of a personality disorder was inaccurate, did not comply with the requirements of the DSM, and was made not to document a genuine psychological problem but only to please your command. The Board rejected this contention and substantially concurred with the comments set forth in the advisory opinion of 13 August 1999. In reaching this conclusion, the Board carefully considered the evaluation reports of CDR H dated 12 February and 14 May 1996, the diagnoses of LT G and the psychologist at Madigan AMC, and the advisory opinion of 13 August 1999.

In resolving this issue against you the Board was aware that in his 12 February 1996 evaluation, CDR H deferred a definitive diagnosis because of a lack of information. Two months later, however, he had the results of the psychological testing and certain other information that was not available earlier. Accordingly, he diagnosed a personality disorder in the medical record entry of 25 April 1996, and elaborated on that diagnosis in his report of 14 May 1996. Although the two evaluations of LT G and the psychologist at Madigan AMC complicate the issue, the Board found that at the time, LT G was a relatively inexperienced practitioner. Further, it is unclear whether all of the relevant documentation was presented to the psychologist at Madigan AMC. The Board additionally found that in preparing the advisory opinion, three psychiatrists, two of whom are serving in the grade of CAPT, reviewed your case and concluded that the evidence supports CDR H's diagnosis of a personality disorder. It does not appear that any of these psychiatrists had any reason to give the case anything other than an unbiased review.

The Board also considered your allegation that there was no personality disorder but only a personality conflict with your superiors at VP 46. In this regard, you cite your fine overall record of service and the fact that your childhood and adolescence were essentially normal, and contend that since no personality problem was manifest before your last assignment, the diagnosis of personality disorder was wrong. However, the Board noted that CDR H noted problems with authority figures and some dysfunction in your childhood and adolescence. Additionally, one of your early performance evaluations stated that your "frankness has caused friction among the military staff." That evaluation also mentioned your suitability for a position involving "limited interface with others." Another evaluation

alludes to a tendency to communicate your ideas in a negative manner. Accordingly, the Board believed that your personality problems were of long standing and did not develop in, but were exacerbated by, your military service.

With regard to your contention that CDR H's privileges have been revoked, the memorandum for record of 2 December 1999 shows his privileges have not been revoked but were limited in December 1997. Further, the limitation was not taken due to professional incompetence, malfeasance or nonfeasance, but due to an unrelated behavioral problem. Accordingly, since his final diagnosis has been confirmed by the advisory opinion, the Board concluded that the limitation on CDR H's privileges provides no basis for corrective action.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request. It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of a probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to: Mr. Charles W. Gittins,
Attorney at Law